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NEW DELHI, THURSDAY, JUNE 11, 1953

## ELECTION COMMISSION, INDIA

### NOTIFICATION

*New Delhi, the 29th May, 1953*

**S.R.O. 1074**—WHEREAS the election of Shri Teg Ram, as a member of the Legislative Assembly of the State of Punjab, from the Khuian Sarwar constituency of that Assembly, had been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Shlv Dayal, son of Ramjas, Zamindar, Waryam Khera;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said election petition, has in exercise of the powers conferred on it by section 109 of the said Act, granted leave to Shri Shlv Dayal to withdraw the said petition;

AND WHEREAS the said Tribunal has in pursuance of the provisions of clause (c) of sub-section (3) of section 110 of the said Act, allowed Shri Suraj Mal, son of Khetaram Bagri, Kumhar, Advocate, Fazilka and Shri Swaran Parkash, son of Shri Sri Ram Bedi, Zamindar, Midda, to be substituted as petitioners in place of Shri Shlv Dayal, son of Ramjas, Zamindar, Waryam Khera;

AND WHEREAS the said Tribunal has, in pursuance of the provisions of section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

### BEFORE THE ELECTION TRIBUNAL, LUDHIANA.

Harbans Singh—*Chairman.*

Hars Raj Khanna—*Member.*

Parma Nand Sachdeva—*Member.*

ELECTION PETITION No. 157 OF 1952

#### PETITIONERS:

Shri Shlv Dyal, son of Shri Ramias, Zamindar, Jat Hindu, resident of Waryam Khera, Voter No. 4350 in the electoral roll for Gumjal Zail of Khuyan Sarwar Constituency, substituted by:

1. Shri Suraj Mal son of Shri Kheta Ram, Bagri, Kumhar, Advocate, Fezilka (originally respondent No. 5).
2. Shri Swaran Parkash son of Shri Sri Ram Bedi, Zamindar, Midda (originally respondent No. 14)—*Petitioners.*

## Versus

1. Shri Teg Ram son of Shri Harpal Singh, Jat Hindu, Editor, Abohar.
2. Shri Bhag Singh son of Shri Mehar Singh, Jat Sikh, resident of Abohar.
3. Shri Harnam Singh son of Shri Harnam Singh, Zamindar, Jat Sikh, resident of Daulatpura, Tahsil Fazilka, District Ferozepore.
4. Shri Arjan Singh son of Shri Hira Singh, Zamindar, Jat Sikh, resident of Gobindgarh, Tahsil Fazilka, District Ferozepore.
5. Shri Manphul Singh son of Shri Uda Ram, Bagri Suthar, resident of Sabuana.
6. Shri Krishan Lal son of Shri Shera Ram, Jat Hindu, Zamindar, resident of Bandiwalla, Tahsil Fazilka, District Ferozepore.
7. Shri Pohla Singh son of Shri Mehar Singh, Jat Sikh, Shopkeeper, resident of Abohar.
8. Shri Bal Ram son of Shri Raja Ram, Zamindar, Jat, Hindu, resident of village Panjkot, Tahsil Fazilka, District Ferozepore.
9. Shri Jaimal Singh son of Shri Lachhu Ram, Jat Hindu, Zamindar, Abohar.
10. Shri Bachittar Singh son of Shri Basant Singh, Jat Sikh, Pleader resident of Fazilka, District Ferozepore.
11. Shri Siri Ram son of Shri Kheta Ram, Jat Hindu, Abohar.
12. Shri Iqbal Singh son of Shri Rattan Singh, Jat Sikh, Zamindar, resident of Khillianwali, Tahsil Fazilka, District Ferozepore—Respondents.

## ORDER

(PARMA NAND SACHDEV, Member.)

The election of Shri Teg Ram, respondent No. 1 (generally mentioned as Master Teg Ram in these proceedings) to the Khuyan Sarwar Constituency of the Punjab Assembly, was originally challenged by Shri Shiv Dyal, an elector of the said constituency, by means of a petition on various grounds set out in the said petition.

On the 31st October, 1952, Shri Shiv Dyal, however, presented an application under section 109 clause (d) of the Representation of the People Act, 1951, for leave to withdraw the said election petition before the completion of the service of the respondents in the case and the filing of written statements. Permission to withdraw the petition was granted to Shri Shiv Dyal by order of the Tribunal, dated the 23rd of January, 1953 (Annexure 'A'). Shri Suraj Malgand Shri Sawarn Parkashi, originally respondents Nos. 5 and 14 applied under section 110(3) (c) of the Act for being substituted as petitioners in place of the withdrawing petitioner and as their applications were within time and they had deposited the requisite security of Rs. 1,000 each, orders were passed by the Tribunal on the 6th March, 1953, for substituting them as petitioners in place of Shri Shiv Dyal (Annexure 'B').

The contesting respondent Shri Teg Ram filed a detailed written statement vehemently controverting the various allegations in the petition and in the list of particulars. These will be dealt with below at their proper places.

On the 17th March, 1953, petitioners made a statement before the Tribunal that they do not press the allegations contained in paragraphs 7 and 10 to 14 and as regards paragraph 6, they only press the allegation that the Lambardars acted as polling agents for respondent No. 1. They thus gave up all other allegations contained in the petition and in the list of particulars. Similarly respondent's counsel did not press the objections raised in paragraphs 15 and 16 of the written statement.

With regard to the allegation in para 6 of the petition, that Lambardars acted as polling agents for respondent No. 1, no particulars were given at all and this being major corrupt practice, full particulars with regard to this under section 83 of the Representation of the People Act ought to have been given i.e., the names of the Lambardars, alleged to have acted as polling agents and, the places and dates on which they acted ought to have been given. This having not been done, the Tribunal passed order on 17th March, 1953 striking off these allegations from the petition for want of particulars and allegations in paragraphs 7 and 10 to 14 in view of the statement of the petitioner, vide (Annexure 'C') which will be read as part of this order.

The case, having thus been narrowed down as a result of the statements of the parties and the orders of the Tribunal, the following issues were framed:

1. Were the nomination papers of respondent No. 14 improperly and illegally rejected by the Returning Officer? If so, was the result of the election not materially affected thereby?
2. Did respondent No. 1 use the vehicles for bringing voters to the polling booths as detailed in List 'C' relating to paragraph 8? If so, what is its effect?
3. Did Shri Hanuman with the connivance of respondent No. 1, abet the impersonation of the persons as detailed in paragraph 9 of the petition? If so, what is its effect?

The parties have produced both oral and documentary evidence in support of their contentions and have argued the case at length before us. I would now take up the issues *seriatim*.

**Issue No. 1.**—Shri Bachitar Singh, originally respondent No. 11, stated before us that he raised an objection against the nomination paper of Shri Sawarn Parkash, originally respondent No. 14, and now petitioner No. 2, on the ground that he had omitted to specify the Zail in column No. 8 of the nomination form against his electoral number and that this objection prevailed. He, however, stated that he had not raised any objection with regard to the identity of the proposer and the seconder of the said candidate. Shri Sawarn Parkash petitioner No. 2 has made a statement as P.W. 12 before us that he had filed two nomination papers Exs. P.W. 12/A and P.W. 12/B. He admits that that objection was taken to his nomination papers on the ground that he had omitted to mention the name of the Zail against his electoral number, the electoral number of his proposer and the electoral number of his seconder in columns Nos. 8, 10 and 14 respectively of the nomination form. He however, states that he informed the Returning Officer that his name and that of his proposer and seconder were duly entered at the numbers given in the Form in the Sarawan Zail of the said constituency, and produced before the Returning Officer the electoral list to substantiate his contentions. He admits that in spite of it the Returning Officer rejected his nomination papers saying that this was a technical defect which could not be cured. Shri Teg Ram, respondent No. 1 has, however, in his statement as R.W. 10, contradicted the statement of Shri Sawarn Parkash, to the effect that Shri Sawarn Parkash did not show to the Returning Officer any electoral roll at the time of the scrutiny and that he did not see even the electoral roll with the Returning Officer at the time. Both the parties had cited Shri M. D. Ahuja, the then Returning Officer but subsequently gave him up and I do not think the personal appearance of this witness before the Tribunal would have in any manner advanced the case of any party. Therefore, the Tribunal also did not think it necessary to examine him as a court witness. It is impossible to believe that the Returning Officer had not the copy of the electoral roll with him at the time of the scrutiny, and it is equally impossible to believe that Shri Sawarn Parkash, when confronted with that objection on the date of scrutiny, would not be able to point out the name of the Zail in which his name, his proposer and his seconder were entered as electors on numbers specified in the nomination form.

Shri Sawarn Parkash had filed two nomination papers which are marked as Nos. 40 and 41 Exs. P.W. 12/A and P.W. 12/B respectively. The nomination paper No. 41 Ex. P.W. 12/B appears to have been rightly rejected on the ground that the same proposer and seconder who had signed as proposer and seconder the Form No. 40 Ex. P.W. 12/A, could not legally sign in the same capacity on the second nomination paper. The nomination paper Ex. P.W. 12/A was rejected by the Returning Officer vide his order dated the 9th November, 1951, which reads as below:

"Objection has been taken to the nomination form of the candidate Sawarn Parkash. In columns 8, 10 and 14 contrary to the specific instructions as mentioned in No. 6 in the foot-notes of the nomination form itself, only a number has been given without specifying either the constituency or any part of the Electoral Roll of the Constituency concerned. I have heard the objection at length and have also heard Shri Sawarn Parkash, the candidate. The provisions of section 35(1) of the Act XLIII of 1951, where it is laid down clearly that the nomination form shall be completed in the form prescribed; and of Rule 26(1)(d) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 51, re-emphasize the position as clearly stated in the foot-note 6 of the nomination form. I am also unable to construe the omission as a clerical error as contemplated in section

33(5) (a) and (b). I hold the objection as valid and reject the nomination form Serial No. 40 of Sawarn Parkash, Khuyansarwar Constituency."

The above order clearly shows that the Returning Officer did not agree to refer to the Electoral Roll of the Constituency at all, and he appears to have taken up this attitude on the ground that the nomination form had not been filled up in strict compliance with foot-note '6' and rule 2(1) (d) of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951. There was, however, no dispute with regard to the identity of the candidate, his proposer and seconder. Shri Bhatn Singh, Sub-Divisional Officer Fazilka, who took over from Mr. Ahuja as a Returning Officer of the said Constituency from 30th November, 1951, has stated before us as R.W. 1 that this Constituency is divided into 8 Zails having separate electoral lists with separate serial numbers and these were produced in Court. A summary examination of these lists would show that the serial numbers of the electoral rolls for six Zails do not go beyond 6666. The serial number of the candidate, as given in column No. 8, that of his proposer in column No. 10 and that of his seconder in column No. 14, is 7660, 7658 and 7837 respectively. These numbers could possibly occur only in the electoral rolls of the remaining two Zails, and a cursory glance on these two would clearly show that the serial number of the candidate, his proposer and his seconder could easily be traced in Zail Sarawan only as pointed out by Shri Sawarn Parkash at the time of the scrutiny when he was confronted with the objection. No effort whatsoever appears to have been made by the Returning Officer to trace these numbers from any list whatsoever at the time. According to rules it was incumbent upon him to make an enquiry on the spot with regard to this objection and, however, summary that enquiry may be according to the exigencies of time, the enquiry has to be made and in this case it was only a reference to the relevant portion of the electoral roll which was only needed. As explained above, it would have hardly taken the Returning Officer a minute or so to locate the numbers in the Sarawan Zail when petitioner No. 2 had brought it to his notice that all these numbers occur in that Zail only.

With a view to fully understand the necessity and the significance of the enquiry to be made by the Returning Officer it is better to reproduce the contents of the certificate of scrutiny as given on the nomination form which the Returning Officer would have to fill up in case he found the nomination form to be in order. This runs as follows:

"Certificate of scrutiny.

I have scrutinised the eligibility of the candidate, the proposer and the seconder and find that they are respectively qualified to stand for election, to propose and to second the nomination."

The very words of this certificate clearly show that the Returning Officer has to make a scrutiny irrespective of the fact whether any objection is raised to the nomination form of a candidate or not, and that scrutiny presupposes an enquiry which may only constitute a reference to the electoral list with a view to find out that the names of the candidate, his proposer and seconder do really occur at the numbers given by them respectively. It does not stand to reason that the Returning Officer may not have the electoral roll with him at the time of scrutiny as is suggested by Shri Teg Ram, respondent No. 1 in his statement as R.W. 10. Even if that was the case, there is no reason to disbelieve the statement of Shri Sawarn Parkash that he had the electoral list with him and pointed out to the Returning Officer that his name that of his proposer and of his seconder, were duly entered at the numbers given in the Form in Sarawan Zail. It would thus appear that the Returning Officer refused to look to the electoral roll whether in his possession or when shown to him by Shri Sawarn Parkash and refused to verify the allegations of Shri Sawarn Parkash. He seemed to have acted on the plea that the nomination form was not complete in all its details and that was a fatal defect and, therefore, he rejected the same. It would have been much better if petitioner No. 2 had indicated the name of the Zail against the electoral numbers given by him in columns 8, 10 and 14 of the nomination form but it is to be seen whether this omission is fatal and the nomination paper must be rejected on that ground. On this point both the parties have cited a number of cases decided by the previous election Tribunals and I have carefully examined all these and I find that there has been a trend of decisions in favour of the proposition that failure to mention the name of the Zail or the sub-division of the electoral roll in which the name of the candidate, his proposer and seconder is entered, is not a fatal one to justify the rejection of nomination paper. It is no doubt obligatory to comply strictly with the provisions of the Statute which are mandatory but equally strict

compliance with the provisions of the rules as those now present before us, is not insisted upon as these are directory and a substantial compliance with these rules would be quite sufficient.

Prior to the promulgation of the present legislation i.e. Representation of the People Act, nomination papers were sometimes rejected on technical grounds of unsubstantial character and there was no provision in the law to avoid these. As a result of past experience it has been made clear by the Legislature that this resulted in hardship and with a view to avoid the recurrence of these, special statutory provision has been made in Section 36 of sub-section 4 to the effect that:

"the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

In view of the above provision, cases of the kind have to be examined with due care and caution and the Returning Officers would have been well advised to exercise that due care and caution to avoid the improper rejection of nomination papers, in this case.

With a view to appraise fully the point at issue whether the omission in this case was a technical one of an unsubstantial character not sufficient to justify the rejection of nomination paper, it will be proper to examine the legal aspect of the whole case. The Returning Officer appears to have rejected the nomination paper under the provisions of section 33(1) of the Act, rule 2(1)(d) of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951 and foot-note 6 of the nomination form. Section 33(1) lays down that.

"On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer or seconder, between the hours of the eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconder."

Rule 2(1)(d) lays down as follows:—

"Serial number of an elector in an electoral roll" includes such particulars regarding the name or description of the electoral area in reference to which the said electoral roll has been prepared as will identify the entry relating to such elector in that electoral roll."

The nomination form prescribed for the purpose is given in Schedule 2 rule 4 and foot-note 6 lays down:

"where the electoral roll is sub-divided into parts and separate serial numbers are assigned to the electors entered in each part, a description of the part, in which the name of the person concerned is entered, must also be given in items Nos. 8, 10 and 14."

The above analysis of the statutory provision contained in section 33(1), rule 2(1)(d), the contents of the Form and the foot-note '6' would show that the columns in the nomination paper are to be filled up in the light of foot-note '6' and in accordance with the provision contained in rule 2(1)(d) and a Form, completed on the above lines, is to be delivered to the Returning Officer under section 33(1). Applying these tests to the Form in question, the only defect is that against the numbers, mentioned in columns 8, 10 and 14, the name of "Sarawan Zail" has not been given. This is at the most an omission and not a defect or a mistake. The Returning Officer, as stated above, was legally bound to make a scrutiny and this scrutiny could only be made by a reference to the electoral roll of the constituency. For deciding objections to the nomination forms, the Returning Officer was bound to make an enquiry. However, summary it may be and the only enquiry in a case of the kind was reference to the relevant Zail of the electoral roll which is bound to be in possession of the Returning Officer at the time and in case it was not there, the Returning Officer was bound to look at it when petitioner No. 2 produced it in court according to his statement which has to be taken at its face value. Under these circumstances it cannot be said that the nomination form was defective to such an extent that it was invalid. At the most the omission in the Form is only a non-compliance with the directions given in the foot-note, which cannot have the same force as a non-compliance with the statutory provisions of the Law.

The attention of the Tribunal was drawn to various rulings bearing on the subject during the course of the arguments and some of these, relevant to the present issue, may be cited with advantage as under.

(1) *Ambala North Sikh Rural Constituency 1937 case decided on May 28, 1937.*

It was held that:

"Omission, to specify in the nomination paper the description of the sub-division of the constituency in which the name of the proposer is entered, is trivial and the rejection of nomination paper on that ground is improper."

(2) *In Batala Sikh Rural Constituency 1946 case, decided on October 22, 1946*

It was laid down that:

"Omission, to describe sub-division of the electoral roll in which the candidate's name is entered, is not fatal to the nomination, and the rejection of nomination on this ground is improper."

It was also laid down that.

"The provisions, as to the filling in of nomination forms, are merely directory and substantial compliance only is required."

After discussing various cases in favour of and against the above propositions, the learned Commissioner laid down in the abovenoted case that the:

"Provisions as to the filling up of nomination papers are not mandatory and omissions are not fatal. The object of naming the sub-division is to the Returning Officer or to an elector to refer to the electoral roll in order that the identity and eligibility of the candidate may be established."

Further on it was remarked that:

"The details to be filled in the nomination paper are intended to ensure either the identity or eligibility of the candidate, the proposer and the seconder. Mention of the sub-division of the electoral roll does not throw any light on the eligibility of the candidate or his proposer or seconder. The omission of the sub-division, therefore, does not go to the root of the validity of the nomination paper. If the provision with regard to the mention of the sub-division had been of such a stringent character, it would not have been relegated to a footnote and the word "sub-division" would have been more clearly defined."

(3) *Similarly in Anglo Indian Constituency (Punjab), 1946, case decided on December 16, 1946.*

It was held that:

"Omission to describe sub-division in which the names of the candidate, his proposer and seconder are entered in the nomination form, is not a breach of any mandatory provision of law and cannot invalidate a nomination paper."

It was also held that:

"The Returning Officer has power to make summary enquiry for deciding objections as to nomination. While scrutinising nominations, he performs a judicial function and should act judicially. He should not mechanically reject nomination and if any obscurity in nomination can be cleared up by summary enquiry he should do so."

(4) *In Mathra Dass Vs. Dara Singh case reported in Government of India Gazette Extraordinary dated 21st January, 1953 at page 865.*

It was laid down that

"The petitioner attempted all right to mention the electoral area but misdescribed it as Halqa Patwar Almoh. This misdescription consisted in writing Halqa Patwar for the ward, village or town as the electoral area of Almoh, will properly be designated. This misdescription may seem to have been only accidental due to the circumstances that at the top of each page of the electoral roll of Almoh the name of the Halqa is also printed. If no manner of description of the electoral area had been attempted to be given, it might have been possible to say that an elaborate search through the electoral roll of the Constituency of Almoh-Pawal would be necessary in order to find out where the candidate's number is actually entered. A description of the part of the electoral roll, in which the name of the person concerned must be given, is, in our view, only directory. If it were intended to be mandatory the words "shall be given" would have been used. Being merely directory, a failure to comply with it strictly should not render the nomination paper invalid. Substantial compliance of a directory provision is sufficient and as we have shown there has been a substantial compliance with the rule of this case."

(5) Case reported in *Government of India Gazette Extraordinary*, dated 24th January 1953 page 205

In this case the electoral number of the seconder had been given as No 729 instead of 728 as a result of the mistake in printing and the nomination paper had been rejected on that ground. The learned Commissioners remarked at page 208:

"It is thus clear that the Returning Officer should have satisfied himself by looking into the electoral roll of Deoria South Constituency which was before him and he should have satisfied himself by making inquiries from respondent No 9 as to how No 729 had been entered instead of No. 728 regarding Ram Naram seconder and if this had been done the mistake in printing would have been brought to his notice in no time."

(6) Case reported in *Government of India Gazette Extraordinary*, dated 27th February 1953 at page 567.

The learned Commissioners were pleased to remark at page 569.

"It is undoubtedly of considerable assistance to the Returning Officer and everybody else interested in the matter and if not only the serial number of the proposer is mentioned but also the sub-division in the electoral roll in which that serial number occurs, but quite obviously the sole purpose of this is to facilitate identification of the proposer so that no time is wasted in ascertaining whether the proposer is a person qualified to act as such. Where however there is no doubt about either the identity of the proposer or his capacity to act as a proposer a mere omission of a sub-division in the nomination paper ought not to be fatal. Section 4 sub-section (4) of the Representation of the People Act, 1950, under which the rule is made, is very clearly framed very clearly says that the Returning Officer may reject any nomination paper on the ground of any technical defect which is not of a substantial character." We have no doubt that the defect, pointed out in this connection was only technical. We say this because both the proposer and seconder in this particular case were undoubtedly entered in the list of voters. They were both competent to act in the manner they did and there was never any doubt about the identity of either."

(7) Similarly on *Indian Election Reports by Bhagat Singh and Gurdev Singh* at page 67, it is laid down that

"Where a petitioner did not give in the nomination paper the description of the sub-division against his electoral roll, an objection was taken to the effect that this omission was fatal. It was held that the non-observance of the foot-note was not so vital as to be fatal and that this omission does not invalidate the nomination."

(8) In *Nanpik Chand Law of Elections 1951* at page 115 under heading '3' while dealing with the effect on nomination it has been stated that there is some conflict as to whether the omission of a sub-division's name is fatal to the nomination. That it is fatal was held in *Raipur North Punjab, North East Towns and Shahabad cases*. The contrary view was taken in the *Palanau, Tirhut, Aligarh, Midnapur South, Gola Gath and Ambala North Sikh cases*. It was suggested that the latter view is correct.

The learned counsel for the respondent has cited *Ambala and Bhandari cases* reported at page 323 of the *Sen and Poddar, Ambala Division case of 1930 Ghondia General Rural Constituency 1937 Punjab North East Towns case reported in Khondia Volume II and Palanau case*, referred to above in addition to an English Authority *Baldwin and others Vs Ellis and others*.

Most of the Indian cases, referred to by the learned counsel for the respondent, have been discussed and distinguished in the cases referred to by the petitioner's counsel and discussed above, and need not be discussed at length. The consonance of authority from 1927 upto the present day appears to be on the side of condoning the omission of the name of the Zail in the nomination paper as a technical defect of unsubstantial character.

The English case, referred to by the respondent related to the election of a Local Government Rural District Council Election and the omission of the name of the Parish in the nomination paper for which the candidate was qualified as Local Government elector. This has no application at all to the facts of the present case because the nomination papers of the concerned persons for election as Rural District Councillors merely stated in column No 5 under the heading 'how qualified' that the persons nominated were Local Government electors and did not state the name of the Parish for which they were qualified as Local Govern-

ment electors as required by rule 4 of the Rural District Councillors Election Order, 1898. The Deputy Returning Officer rejected the nomination papers as being invalid because the parish within the poor law union for which qualifications was claimed, was not stated. Upon an election petition it was held that the omission to state in the nomination paper the name of the parish in which the persons nominated was qualified as a Local Government elector was a non-compliance with the requirements of rule 4 of the Rural District Councillors Election Order, 1898. From a perusal of the judgment of the case, it would appear that the rules, made under this law, were given the same force as the statutory law. The mention of the parish was absolutely necessary in the case under discussion to establish the qualification of the candidate against the column "how qualified." In the case before us, the candidate, his proposer and seconder derived their rights of franchise from the entries in the electoral roll of the constituency and it was on the basis of this entry that they were qualified to stand for the election, propose and second the nomination of the candidate. The omission of the name of sub-division in columns Nos. 8, 10 and 14 against their numbers in the electoral roll, could not possibly disqualify them from standing, proposing and seconding because they derived this right by being entered in the electoral roll of the constituency which had been mentioned in the nomination form. No useful purpose will be served by quoting at length the extracts from the English Law and I am clearly of the view that this case has no application to the facts of the present case and cannot in any manner succeed to change my view. I am thus clearly of the opinion that the nomination paper of Shri Sawarn Parkash, petitioner No. 2, marked Ex. P.W. 12/A, was improperly rejected by the Returning Officer.

I will now take up the second part of the issue whether this rejection has not materially affected the result of the election. The burden of this part of issue was rightly placed on the respondent and besides producing himself as his own witness stating that he was an old man and genuine worker of the Congress of long standing for which I have no reasons to doubt his statement, he has not adduced any evidence to rebut the well established presumption laid down consistently since the promulgation of the election law that the result of election is presumed to have been materially affected in case of rejection of a nomination paper. No doubt the respondent succeeded at the polls by an overwhelming majority and but for one other candidate i.e. Shri Bachitar Singh P.W. 1, who escaped forfeiting his security by a narrow margin, all other contesting candidates forfeited their securities. This might show that the respondent was a genuine and sincere Congress worker of long standing might have a strong hold on the constituency but it cannot be in any manner said with accuracy as to what would have been the state of affairs if petitioner No. 2 had been in the field and his nomination paper had not been rejected. Petitioner No. 2 has also stated with confidence as P.W. 10 that he had resigned from a Gazetted Government service on 1st November 1951 with a view to stand for election in the said constituency where he commanded a lot of influence as one of the big allottees and a refugee besides being a descendant of famous Bedi family which has many followers in the constituency. It is altogether difficult to forestall as to what would have been the exact position if both petitioner No. 2 and respondent No. 1 were in the field of election along with their other rivals. Whether petitioner No. 2 would have succeeded or respondent No. 1 had succeeded, I am not concerned with. Petitioner No. 2 had not the chance to measure his strength in the field of election and the electorate had no chance to exercise its choice in his favour at all. Be that, as it may, the clear, consistent and strong presumption is well established by all decided cases on the point so far as that the result of election must be presumed to have been materially affected in case the nomination of a candidate had been improperly rejected. The burden was heavy on the respondent and he has failed to discharge it. I am, therefore, clearly of the opinion that the result of election in this case has been materially affected by the rejection of the nomination paper of petitioner No. 2. I would, therefore find issue No. 1 in favour of the petitioners.

*Issue No. 3.*—The allegations with regard to this matter are contained in paragraph No. 8 and in the list of particulars marked 'C', wherein it was stated that respondent No. 1 engaged or hired vehicles No. R.S.G.N. 381 and R.P.R. 692 for the carriage of voters of Dangar Khera and Killianwabi villages to polling stations on 5th January, 1952 and the date of polling and that a report to this effect was made to the Presiding Officer of Nihal Khera Polling Station by Shri Suraj Mal. There is no doubt that some evidence has been led on this point but no witness has been able to give the number of the motor vehicle in which these voters were carried. Even petitioner No. 1, inspite of the fact that he had made a written complaint, to the Presiding Officer at Nihal Khera Polling Station, Ex. P.W.9/B, which was returned to him with the endorsement of the Presiding Officer Ex. P.W.9/B-1, had to admit in his examination as P.W.13 that he could not notice the registration number of the vehicles, used by the Congress Candidates for bringing their voters, as they did not come near enough for him to



notice the same. Although he had seen such voters being transported on 7th January, 1952 he made the application on 9th January, 1952. Even this piece of documentary evidence is of little avail to the petitioners in establishing their case against the respondent under this head. The oral evidence, produced to substantiate the allegations under this head, is so vague, inconclusive, flimsy besides being tainted and after thought that it is impossible to give a finding in favour of the petitioners on this issue. The most important link in the case is missing that none of the witnesses has been able to give the registration number of the vehicles used for the purpose. These vehicles have been described by some witnesses as a pick-up and by others as a jeep but nobody has been able to give their registration number the names of the owners of the vehicles or the names of the drivers etc., Respondent No. 1 admits having used certain vehicles for canvassing purposes and for this the purchase of petrol was necessary and the evidence of petrol dealer cannot in any manner prove the allegations that this petrol was put in the vehicles for the carriage of voters from their villages to the polling stations. The allegations of the kind, being by way of a charge of corrupt practice, have to be established by clear, consistent, conclusive and direct evidence which is sadly missing in the present case. I would, therefore, hold that the petitioners have failed to substantiate their allegations forming the basis of Issue No. 2.

**Issue No. 3.**—With regard to this issue we have the evidence of P.W. 9 Shri Ram Nath Mahna, Presiding Officer at Polling Station No. 8 Kabul Shah Khuban Rest House P.W. 10 Ch. Roshan Lal, Polling Officer at the said polling station, P.W. 11 Shri Manni Lal, A.S.I. and Shri Hanuman R.W. 2. From the evidence, produced, it is clear that one Shri Sultan and his wife Mst. Burji voted in place of Shri Devi Lal and Mst. Dakhan, wife of Shri Devi Lal at Kabul Shah Khuban Rest House Polling Station No. 8 of the said constituency and the fact was brought to the notice of the Presiding Officer P.W. 9. Neither Shri Prithvi Raj nor Shri Sultan nor his wife Mst. Burji have been produced before us. Although P.W. 9 made enquiries from Shri Sultan and Mst. Burji, who admitted before him having impersonated for Shri Devi Lal and Mst. Dakhan at the instance of Shri Hanuman but the latter at that very moment repudiated the charge and stated to the Presiding Officer then and there that he had been himself duped and had given the parchis (un-official identity slips) to the two persons on their representation to him that they were Shri Devi Lal and Mst. Dakhan respectively. There is no evidence to connect Shri Hanuman R.W. 2 with the abetment of impersonation and this Shri Hanuman having been himself discharged as a result of a regular trial for the offence, I do not think there is any material to hold that this Shri Hanuman abetted the impersonation by Shri Sultan and Mst. Burji. These allegations also come in the category of a charge of corrupt practice which has to be proved by clear, cogent and direct evidence as required to substantiate a criminal charge. The evidence produced, falls short of that standard and it is impossible to give a finding on this issue in favour of the petitioners.

In view of the above, the petition is accepted and it is declared that the election of the returned Candidate, viz. Shri Teg Ram, Respondent is void on the ground that the nomination paper of petitioner No. 2 was improperly rejected by the Returning Officer and this has materially affected the result of the election.

As regards costs, I do not think there is any justification for awarding costs to the petitioners as the election has been avoided on account of the error of the Returning Officer due to no fault of respondent No. 1 who had not raised any objection to the nomination of petitioner No. 2. Moreover the petitioners having themselves given up most of the allegations of corrupt practices and having failed on issues Nos. 2 and 3, they are not equitably entitled to any costs although their petition has been accepted. Under these circumstances I would order that the parties shall bear their own costs in these proceedings.

P. N. SACHDEVA, Member.  
Election Petitions Tribunal, Ludhiana.

The 14th May, 1953.

I concur in the order proposed.

(Sd.) HARBANS SINGH, Chairman.

I concur in the order proposed.

(Sd.) HANS RAJ KHANNA, Member.

The 14th May, 1953.

## PRESENT:

Shri Mast Ram, Advocate for the petitioners.

Nemo for the Respondent.

Orders announced in open Court.

(Sd.) HARBANS SINGH, *Chairman*.

(Sd.) HANS RAJ KHANNA, *Member*.

(Sd.) P. N. SACHDEVA, *Member*.

The 14th May, 1953.

## Annexure 'A'

## IN THE COURT OF ELECTION TRIBUNAL, LUDHIANA

ELECTION PETITION No. 157 OF 1952.

Shri Shiv Dayal.

*Versus.*

Shri Teg Ram etc.

## ORDER

In the last general elections Shri Teg Ram, respondent No. 1, was declared elected from the Khuyan Sarwar Constituency to the Punjab Legislative Assembly. The petitioner Shri Shiv Dayal filed the present election petition for seeking a declaration that the election of respondent No. 1 was void.

On the 31st of October, 1952, before even the respondent filed a written statement to the election petition, an application was put in under section 109(1) of the Representation of the People Act, 1951, by the petitioner seeking leave of the Tribunal for withdrawal of the election petition. It was stated in the petition that the petitioner was not in a position to prosecute the petition as some of the witnesses, that were to be cited by the petitioner, were not prepared to support the petitioner and that some of them were not available. It was further stated by the petitioner that the allegations in the petition about corrupt practices and other allied matters were based on some misunderstanding and that it was impossible for the petitioner to substantiate them even partly. It was also stated that the withdrawal of the petition was not based upon any bargain or other consideration.

As order was passed on that very day that the petition should be published in the State Official Gazette and that the notice of the same should be given to all the respondents.

On the 13th of December, 1952, the date fixed, Shri Suraj Mall, respondent No. 5, appeared and put in reply opposing the grant of the application for withdrawal of the petition. It was stated by Shri Suraj Mall, respondent, that the application for withdrawal was not voluntary and bonafide. It was alleged that one Shri Bal Ram, a near relative of the petitioner, was being prosecuted under Section 302 of the Indian Penal Code, and in that case Shri Teg Ram had tried to influence the prosecution witnesses in favour of the accused. It was also stated that one Shri Sukhran Dass, who was a right hand man of Shri Teg Ram, respondent, had filed a criminal case under section 506/352 of the Indian Penal Code against Shri Khiali Ram and Shri Anant Ram, close relatives of the petitioner, and that Shri Teg Ram, respondent, had used his influence in favour of the petitioner's relatives and had got the complaint dismissed. It was also stated that the pressure had been brought to be put on the petitioner by the respondent through some influential persons and that the respondent had held out an assurance to the petitioner that the respondent would not do any act in or outside the Legislative Assembly which might be derogatory to the interests of the landlords. It was, therefore, prayed that the withdrawal application may be rejected.

Subsequently Shri Sawarn Parkash, respondent No. 14, also appeared and opposed the application for withdrawal. It was stated on behalf of Shri Sawarn Parkash that the withdrawal application had been procured under pressure, and also in consideration of Shri Teg Ram's having promised not to say anything against the landlords.

The statements of Shri Suraj Mall, respondent, Shri Shiv Dayal, petitioner, and Shri Teg Ram, respondent, were recorded. No other evidence was adduced before the tribunal. Shri Suraj Mall stated that he had no personal knowledge with regard to the witnesses in the case under section 302 of the Indian Penal Code against the relative of the petitioner having been won over at the instance of respondent Shri Teg Ram. He added that he had only heard it from the relations of Shri Shiv Dayal. With regard to the allegation about the case by Shri

Sukhram Dass, it was stated by Shri Suraj Mall that though he had not been informed by anybody, he believed that that case by Shri Suraj Mall had been withdrawn at the instance of Shri Teg Ram. With regard to the pressure having been brought on the petitioner, it was stated by Shri Suraj Mall that he had been told about it by the relatives of the petitioner. Shri Suraj Mall also added that he would like to be substituted as a petitioner in case the withdrawal is allowed and nobody else comes forward with a prayer to be substituted.

Shri Shiv Dayal, petitioner, in his statement stated that he was withdrawing the petition for two reasons: Firstly that there was some sort of misunderstanding that electors were entertained with liquor by respondent No. 1. Further investigation had shown that this was not so. Secondly the petitioner and Shri Abnash Chander had decided to file two petitions challenging the election of Khuyah Sarwar constituency i.e., the present election petition and that of Abohar Constituency in case Shri Abnash Chander. Vs. Shri Chand Ram. Shri Abnash Chander had withdrawn his application with the permission of the Tribunal and Shri Shiv Dayal added that he did not want to remain alone in the field and fight the election all by himself. The petitioner further stated that he did not want to proceed with the election petition under any circumstances. The petitioner denied that the withdrawal had been actuated by any bargain or other consideration moving from the respondent. With regard to the deputation, alleged to have been taken to the petitioner, Shri Shiv Dayal stated that the deputation did come but the talk was only in the form of a lecture by Sawami Keshwa Nand that the landlords and tenants should live amicably together.

Shri Teg Ram, respondent, in the course of his statement stated that he had no hand in prompting the withdrawal of the application and no consideration or bargain had passed from him to the petitioner or had been settled between them. Shri Teg Ram, stated that he was incharge in Ferozepore District of the Bhudan Yajna Movement started by Acharya Vinobha Bhave. Shri Teg Ram also stated that he, Sawami Keshwa Nand and Shri Achint Ram visited the village of the petitioner in connection with the above movement and Sawami Keshwa Nand advised the landlords and the tenants to have amicable relations as, according to him, Bhudan Yag campaign could only succeed if the relations of landlords and tenants were cordial. The petitioner was in no way induced to withdraw the petition. Shri Teg Ram added that he had nothing to do with the withdrawal of complaint by Shri Sukhram Dass.

It has been urged by Shri Suraj Mall, respondent, that the application for withdrawal has been actuated by a bargain or consideration which ought not to be allowed. The law on the subject of withdrawal of election petition is laid down in Sections 108 to 111 of the Representation of the People Act, 1951. The material section with which we are concerned at the present time is Section 110 of the Act which runs as under:

- (1) If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners.
- (2) No application for withdrawal shall be granted if in the opinion of the Election Commission or of the Tribunal, as the case may be, such application has been induced by any bargain or consideration which ought not to be allowed.
- (3) If the application is granted:
  - (a) the petitioner shall, where the application has been made to the Tribunal, be ordered to pay the costs of the respondents theretofore incurred or such portion thereof as the Tribunal may think fit;
  - (b) notice of the withdrawal shall be published in the Official Gazette by the Election Commission or by the Tribunal, as the case may be;
  - (c) a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing and upon compliance with the conditions of section 117 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Tribunal may think fit.

According to sub-section (2) of the above section, no application for withdrawal should be granted if in the opinion of the Tribunal the application has been induced by any bargain or consideration which ought not to be allowed. The question arises whether the evidence on the record shows that there has been any bargain between respondent No. 1 and the petitioner or whether any consideration has flowed from respondent No. 1 to the petitioner which ought not to be

allowed. In our opinion the evidence on the record fails to show that there has been any bargain between the petitioner and respondent No. 1. It is true that the explanation furnished by the petitioner for his refusal to pursue the application is not very convincing, and satisfactory but in the absence of any direct evidence, in our opinion, we shall not be justified in concluding that there has been any bargain or consideration. The statement of Shri Suraj Mall shows that he has no personal knowledge with regard to any bargaining or consideration.

There is another reason on account of which also, we think the application for withdrawal should be granted. The law does not require that the petitioner in an application for withdrawal should adduce sufficient reasons before the application for withdrawal can be accepted. A perusal of sub-section (2) of the above section, shows that the withdrawal application should be granted in due course unless it is shown that the application has been induced by any bargain or consideration which ought not to be allowed. The burden would thus shift upon those who oppose withdrawal application to show that there has been any bargain or consideration which ought not to be allowed. That burden, Shri Suraj Mall and Shri Sawarn Parkash, respondents, have failed to discharge.

The matter can also be looked at from another angle and it is whether the Tribunal would be justified in proceeding with the petition when the petitioner himself is reluctant to proceed with the same. The present petition involves questions of facts and law, and there might be difficulty in calling for witnesses and bringing evidence on the record; for questions would also arise in that contingency as to who should bear the expenses of the witnesses.

This aspect was considered by Grove J, in the North Durham case (30'M. & H. at 2). It was observed by the learned Judge in that case as under:

"The withdrawal of a petition must be by leave of the judge, and if the judge saw that the withdrawal was the result of any compromise to prevent evidence from being brought forward, he ought not to allow a petition to be withdrawn, but he ought as far as he has power to do so, to insist upon the petition being proceeded with. But although the Act of Parliament to my mind rather expects that on the part of a judge, no doubt it is an extremely difficult task, because, if the parties do not call witnesses forward, a judge himself cannot become counsel for the petitioner and judge at the same time. He cannot force a reluctant or antagonistic witness to answer questions and at the same time keep the scales of justice even. Therefore, if, the duty is thrown upon the judge of occupying the position of counsel and judge at the same time, it is simply, according to the practice of the Law of England an impossibility for him to perform that duty. I mention this because the task is an unusual one which the Act imposes on the Judge, namely, of exercising a discretion as to the withdrawal of a petition. I think there might possibly be cases in which a judge would not allow a petition to be withdrawn, and would, as far as he could, use his power to prevent it. He might for instance exercise the power which is given to him of recommending the court not to allow the deposit to be withdrawn without considerable explanation. The task no doubt would be an extremely difficult one, and the mode in which a Judge is to compel parties to go on with a petition which they have determined to withdraw remains to be discovered. I am not aware of how it can be made compulsory but at all events the judge has a power over the deposit in court, which may in some degree be indirectly used as a compulsion."

In the present case, as stated above, the respondents have not even filed their written statements. There is no evidence before the Tribunal on which a finding can be given with regard to any of the grounds set down in the election petition. We have, therefore, no alternative but to permit the withdrawal of the election petition.

It has been argued before us that one of the grounds, stated in the petition, was that the nomination papers of Shri Sawarn Parkash, respondent, were improperly rejected and that not much evidence was required to determine the points covered in the above allegation. We, however, feel that to refuse to permit the withdrawal of the application, would result in the Tribunal remaining confined to the ground of the alleged improper rejection of the nomination papers of Shri Sawarn Parkash. Serious allegations of impersonation, bribery and treating by liquor have been made in the petition. The effect of rejecting the application

would be that there would be nobody to adduce evidence in support of these allegations as the petitioner can hardly be expected to lead evidence after the present application, in view of his attitude and statement that he does not want to pursue the petition under any circumstances. This would not be a desirable result as the object of the election law is to ensure the purity of elections; and any course, that obstructs the bringing before the Tribunal of all material to show that there have been grave illegalities, should be avoided. In case, however, the withdrawal application is granted, then under section 110, clause (3) (c) of the Act, Shri Suraj Mall, Shri Sawarn Parkash or any elector in the Constituency can apply to be substituted as a petitioner and pursue the application and prosecute all the allegations made therein.

We, therefore, grant the application for withdrawal. As the petition has been withdrawn at an early stage, we do not deem it desirable to impose heavy costs on the petitioner. The petitioner shall pay the costs of respondent No. 1 which we assess at Rs. 100. Notice of the withdrawal of this application shall be published in the State Official Gazette under section 110, clauses (b) and (c) of the Representation of the People Act, 1951.

(Sd.) HARBANS SINGH, *Chairman*.

(Sd.) HANS RAJ KHANNA, *Member*.

(Sd.) P. N. SACHDEVA, *Member*

CAMP MOGA;

The 23rd January 1953

#### Annexure 'B'

We agree

Vs.

Shri Suraj Mall etc.

Shri Teg Ram

(Shri Shiv Dayal).

#### ORDER.

Shri Mast Ram, Advocate, has produced the treasury receipt for having deposited Rs. 1000 in the Imperial Bank of India, Ferozepore, on 8th March 1953, in compliance with the order of this court dated the 27th of February, 1953. There are thus two persons—Ch. Suraj Mall and Shri Sawarn Parkash who have applied under clause (c) of sub-section (3) of section 110 of the Representation of the People Act, 1951, within the prescribed time for being substituted as petitioner. Both of them were respondents in the original petition and were entitled to put in the petition in the first place. Ch. Suraj Mall has no objection in Shri Sawarn Parkash being joined with him as co-petitioner. No objection to these applications has been raised on behalf of respondent No. 1. We, therefore, order that under the provisions, noted above, Ch. Suraj Mall and Shri Sawarn Parkash be substituted as petitioners in place of Shri Shiv Dayal.

The respondent No. 1 was directed at the last hearing to file his written statement today. His counsel states that the same is not ready as he has not been able to contact his client. He should now file his written statement at Ferozepore on 11th March, 1953. He will also pay Rs. 50 as costs of this adjournment.

Case to come up on the 11th of March, 1953.

(Sd.) HARBANS SINGH, *Chairman*.

(Sd.) HANS RAJ KHANNA, *Member*.

(Sd.) P. N. SACHDEVA, *Member*

The 6th March, 1953.

#### Annexure 'C'

#### ORDER

With regard to the objections of particulars relating to the other paragraphs, we have heard the parties.

With regard to the allegations that Lambardars acted as polling agents for respondent No. 1, contained in paragraph 6, no particulars are given at all. This allegation is one of major corrupt practice and, therefore, in accordance with Section 83 of the Representation of the People Act, full particulars should have been given. At least the names of the persons, who were said to be Lambardars and acted as polling agents, should have been given. We, therefore, feel that this part of the paragraph also must be scored out—being too vague and no particulars having been given. Paragraph 6, therefore, stands scored out *in toto*.

With regard to paragraph 8 relating to the allegation of respondent No. 1 transporting voters in hired lorries, the evidence shall be confined to the particulars given in the list.

The particulars, given in paragraph 9 of the petition, are sufficient and the objection, in respect of this paragraph, is over-ruled.

Paragraphs 7 and 10 to 14 are scored out in view of the statement of petitioner No. 1 and counsel for petitioner No. 2.

The two other technical objections raised on behalf of respondent No. 1 in paragraphs 15 and 16 of the written statement are not being pressed and are otherwise without force.

(Sd.) HARBANS SINGH, *Chairman*.

(Sd.) HANS RAJ KHANNA, *Member*.

(Sd.) P. N. SACHDEVA, *Member*.

*The 17th March, 1962.*

[No. 19/157/52-Elec.III/8009.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*